

The pages will distribute the amendment.

DELEGATE BOYER: May I suggest that we mark this one "G", for "good"?

DELEGATE JAMES (presiding): The amendment will be modified and marked G. I hope there is no confusion created by doing this.

This is Amendment No. 5. The Clerk will read the amendment.

READING CLERK: Amendment No. 5 as amended by Report S&D-17 to Committee Recommendation GP-7, GP-8, GP-9, GP-12, R&P-1, and LB-3 on second reading, by Delegate Boyer, Chairman of the Committee on General Provisions. On page 1, section 10.01, "Effect of Constitution on Existing Law", in line 13 strike out the words: ", and all", and insert in lieu thereof the following: ". A law in effect on June 30, 1968, shall not be deemed in conflict with this constitution solely because it was enacted pursuant to authority granted by a provision of the prior Constitution. All".

DELEGATE JAMES (presiding): Delegate Boyer.

DELEGATE BOYER: This is more or less really a housekeeping amendment. It was born as a result of the fact that some legal experts raised some questions about the existing language in 10.01.

What this does is to reassure those who may feel that there is a gap in the enumeration of legislation. You could stop, I imagine, before enumerating "including local legislation or common law," but once you start adding things by enumeration, then there is some question raised. This is an attempt to reassure those who may be concerned that some of the statutory law now on the books pursuant to Article XVII of the existing Constitution, that this will not be unintentionally eliminated. This Amendment G is an attempt to close that gap and plug up that loop-hole.

DELEGATE JAMES (presiding): Is there any further discussion?

The Chair recognizes Delegate Case.

DELEGATE CASE: Will Delegate Boyer yield to a question?

DELEGATE JAMES (presiding): Will Delegate Boyer yield to a question?

DELEGATE BOYER: I will be very happy to.

DELEGATE CASE: I am in sympathy with what you seek to do here, Delegate

Boyer, but is it not true that laws are enacted by the General Assembly in accordance with their inherent and implicit legislative power, and that they are not enacted, as I understand it at least, pursuant to authority granted by a state constitution?

Now, your amendment says "laws enacted pursuant to authority granted", and actually authority is not granted usually in state constitutions to enact laws, but state constitutions are restraints upon the inherent authority of the legislature.

Had you taken that into consideration when you drafted this?

DELEGATE JAMES (presiding): Delegate Boyer.

DELEGATE BOYER: What Delegate Case says is correct. Of course, the legislature or General Assembly does have the inherent power to pass laws. The fountainhead of all laws, however, is any constitution, in this case the Constitution of 1867, and hopefully this 1968 constitution.

This is an attempt, as I say, from the best expert legal opinion that we have, that this language might close up some question that does not exist in my mind, frankly, but I yield to better judgment to add this amendment, to put the cork in the bottle for any misunderstanding later on.

DELEGATE JAMES (presiding): Delegate Case.

DELEGATE CASE: Delegate Boyer, I suggest to you that constitutions are not the fountainhead of all legislative power. In states, the legislative power comes from the sovereignty of the people delegated through the legislature, so it is the people who are the fountainhead of the power, and the constitution is only repressive or restrictive in nature. It is unlike the federal constitution which, of course, is a document of granted powers. And I am wondering whether or not you would not be amenable to asking that action on this amendment be postponed until perhaps more appropriate language could be worked out.

DELEGATE JAMES (presiding): Delegate Boyer.

DELEGATE BOYER: Of course we are always interested in obtaining the best language possible, and certainly if there is any question in Delegate Case's mind, there probably is in others, and I would certainly be willing to concur postponement.

DELEGATE JAMES (presiding): Would you withdraw the amendment temporarily?